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LETTER DATED 24 FEBRUARY 2000 FROM THE PERMANENT REPRESENTATIVE OF MOROCCO TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit to you herewith the memorandum submitted to the Secretary-General of the United Nations by the Minister for Foreign Affairs and Cooperation of the Kingdom of Morocco (see annex). I should be grateful if you would have this letter and its annex distributed to the members of the Security Council and issued as a document of the Security Council.

(Signed) Ahmed SNOUSSI
Ambassador
Permanent Representative

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Annex

[Original: English and French]

At the moment when the United Nations has just completed the identification process and published the second provisional list of voters and following your latest report to the Security Council, which contains an analysis of the difficulties and problems of implementing the referendum process of which Morocco took due note as it unfortunately confirms some of its own fears and apprehensions, the Government of the Kingdom of Morocco wishes to convey to you and to the Security Council its observations and conclusions on the implementation of the Settlement Plan, the progress of the identification process and, in particular, the prospects for the implementation of the appeals procedure.

Morocco has already had occasion to discuss with you and with the members of the Security Council, either directly or in writing, the difficulties, shortcomings and errors which have undermined the legality of the identification process.

With the completion of that process, we realize that the results it has produced confirm the fears repeatedly expressed by Morocco as to the circumstances under which the identification process was taking place.

Indeed, ever since the adoption by the Security Council of the Settlement Plan contained in documents S/21360 and S/22464, Morocco had continuously stressed that the identification process must take place in conditions allowing all Saharans to participate in the referendum, without discrimination between those who were included in the Spanish census of 1974 and those who were not counted for political or economic reasons.

From the adoption of the identification criteria by the Security Council in 1991 onwards, the other party expressed opposition and its desire to see the referendum restricted to those included in the census, in order to prevent the participation of all Saharans who had fought against Spanish oppression and occupation, as recognized even by the former colonial Power, and had sought refuge in Morocco for both political and economic reasons.

This position was all the more blatant and illogical in that the Settlement Plan, accepted by the parties and endorsed by the Council, specified clearly that the Identification Commission must examine all applications from all persons claiming the right to participate in the referendum on the grounds that they are Saharans and were not counted in the 1974 census.

This right was also affirmed by the Conference of Tribal Chiefs, held in Geneva in 1990, whose declaration solemnly provided that no Saharan should be prevented from proving his or her Saharan origin.

The identification criteria adopted by the Security Council in its resolution 725 (1991) were the legal embodiment of this principle.

The Settlement Plan, the identification criteria and the compromise on their interpretation gave persons not included in the census the right to use oral testimony to prove that they belonged to Western Sahara.

This means of proof, accepted by the parties and confirmed by legal provisions, was diverted from its purpose from the very beginning of the identification process and was transformed into a veto right which the other party used against the acceptance of applicants put forward by Morocco and not included in the census.

The Settlement Plan, the identification criteria and the compromise on their interpretation do not in fact require that applications filed by Saharans not included in the census be subject to the opinion of two sheikhs. The oral testimony of one sheikh should be enough, according to the Plan, to help the Commission make a decision.

But it was hard to imagine that those who publicly support the restriction of participation in the referendum would allow their sheikhs to testify in favour of Saharans put forward by Morocco and not included in the census.

From the beginning of the process, Morocco drew the attention of MINURSO and the United Nations to this serious deviation from the provisions of the Settlement Plan.

The only response to our concerns by officials of the Identification Commission was to ask us not to overestimate the significance of the testimonies of sheikhs from the Frente POLISARIO and their impact on the Commission's decisions.

Developments in the process confirmed our fears, particularly when the President of the Commission circulated on 5 May 1998 a letter asking the members of the Commission to accept among candidates not included in the census only those who fulfilled one of the following three conditions: positive concurring testimonies of two sheikhs, possession of documents, or testimony in favour of other members of the family. Thus, what we had feared finally became institutionalized, despite the spirit and the letter of the Settlement Plan.

The analysis of the results of the first phase of the identification process and the results of the second phase clearly demonstrate that almost all applicants opposed by the sheikhs of the other party were rejected by the Identification Commission.

The acceptance rate of applicants from the tribal groupings contested by the Frente POLISARIO since the beginning of the process further illustrates this situation. Consequently, notwithstanding the provisions of the protocol and the guidelines concerning the identification process, the stipulation that two sheikhs must give concurring testimony does not seem to have been dropped.

It is true that rejected applicants can use the appeal procedure to point out any irregularities and to demand that decisions which they consider unfounded be reversed.

However, the problem of the value of oral testimony is bound to arise again, and unless the principle of concurring testimony is permanently waived, appeals will lead to the same injustices being committed by the Identification Commission.

By rectifying this error, which has never been accepted, we would simply be going back to the provisions of the Settlement Plan with regard to concurring testimony, which they do not mention at all. What would have to be done would be simply to apply the principles of logic if the real aim is to have a democratic, equitable referendum.

That being said, the lack of experience of some members of the Commission, and their ignorance of the customs and dialects of the region, have significantly complicated the implementation of the identification process and have led repeatedly to negative results which our applicants have seen as seriously unfair.

The revision of the results of the Identification Commission is another procedure which was established in violation of the Settlement Plan and has done significant harm to Morocco and its applicants.

According to the provisions of the Settlement Plan, a challenge through the appeals procedure is the only means of striking from the list an applicant already accepted by an office of the Identification Commission.

Unfortunately, the Identification Commission established a revision committee which revised downwards the number of accepted applicants, lists of whom had been officially communicated to us.

This irregular procedure not provided for in the Settlement Plan is unfair because applicants who had already been accepted were subsequently turned down without being informed of the reasons and without being given the right to argue in favour of being maintained on the lists of accepted applicants.

Morocco officially requested that this unfair situation be corrected and it hopes that the 7,000 applicants affected by this revision will regain their rights before the beginning of appeals.

As far as Morocco is concerned, the requirements of fidelity to the Plan and equity for the populations of the Territory, which underlie its position on the identification process, are today the main focus of the debate on appeal procedures.

Applicants to whom the Commission did not do justice would like to be able to count on appeals being carried out in a proper manner so as to be able to claim their rights.

From Morocco's standpoint, the consideration of appeals at the admissibility stage should be limited, as provided for in the procedures and operational guidelines for appeals, to a technical evaluation, followed by automatic referral to the appeals body of all applications which fulfil conditions of form.

Any attempt to consider the substance of the appeal documents, particularly the testimony presented by an applicant in support of his appeal, would constitute a premature and partial judgement that amounted to denying the applicant the opportunity to be heard by the appeals body.

The concern of the international community being to hold an equitable and credible referendum, all those who have been adversely affected must be heard by an appeals body and have their rights restored.

Given this basic requirement, Morocco cannot agree to a procedure which, on the pretext of adhering to the timetable, would be selective and disqualify a priori some applicants.

Likewise, no political or legal consideration and no technical or financial pretext could or should prevent the exercise of the inalienable and imprescriptible right of rejected applicants to appeal.

As to the consideration of appeals on the substance, Morocco would like to reiterate its position with regard to oral testimony.

Experience has shown that relying on the sheikhs of the other party amounts to giving that party a veto right which is not provided for in the Settlement Plan. As we see it, this illegal practice ought to be abolished if we are to have a fair and equitable referendum allowing all Saharans to take part in determining the fate of this region.

The testimony of one sheikh who fulfils the agreed conditions, in addition to that of any witnesses, should suffice to prove that an applicant belongs to the Territory and has the right to participate in the referendum.

The appeals phase being the final stage before the establishment of the definitive list of voters, Morocco hopes that it will be marked by a serious, sustained effort on the part of the United Nations to guarantee impartiality, objectivity and equity. Otherwise, the whole process will lose its credibility and even its raison d'être.

That being said, in the implementation of the Settlement Plan we must all be mindful of the human dimension of this question, namely, the fate and the future of thousands of refugees abusively displaced from their homes 25 years ago and separated from their families to serve as a means of pressure and as currency (we will not mention, for example, the hundreds of children sent abroad for military training).

Those refugees, who are vulnerable and are forced to live a precarious life in camps outside the Territory, have only one aspiration: to return to their homeland. In order for that to happen, they must be able to express their will without constraints. Has not the Representative of the United Nations High Commissioner for Refugees (UNHCR) recognized the existence of such constraints on the part of the Frente POLISARIO, which he characterized as "influence"?

Morocco, for its part, repeatedly calls on UNHCR to shoulder its responsibilities towards these refugees in accordance with its humanitarian

mandate, in order to guarantee their repatriation and secure the requisite conditions for them to express in all freedom and without any constraints, direct or indirect, their right to return voluntarily to the Territory.

Recently, during the visit of a UNHCR delegation to Morocco in November 1999, the Moroccan Government once again invited UNHCR to intensify its efforts, in order to protect the refugees in the camps at Lahmada against the blackmail and pressure on them to demand to be settled to the east of the wall.

Morocco denounced then and continues to denounce the attempt by the other party to force the refugees to request repatriation to the east of the wall by making them fear for their safety if they were to return to the Territory.

This new device is simply a pretext to keep these refugees under its influence and to prevent them from rejoining the thousands of their brothers and sisters who have returned to the Territory.

In anticipation of their return, Morocco has already prepared the necessary infrastructures for accommodating the refugees and their families.

These infrastructures are in addition to the tremendous investment and capital development effort launched by Morocco since 1975 to bring this Territory up to the level of other parts of Morocco in terms of economic and social development.

Now that the refugees have been pre-registered and identified, it seems unfair and inhuman not to allow them to return home, where every arrangement has been made to receive them and to settle them permanently.

To this end, our Government is ready to take, in coordination with UNHCR, the necessary confidence-building and information measures to correct the indoctrination and psychological conditioning imposed on them and to brief all displaced persons as to their rights in a Territory and in a country known to be a country of law and freedom.

As we have said, UNHCR will of course receive, as soon as it is organized and its officers appointed, all our assistance and the necessary facilities to fulfil its mission in close cooperation with the Moroccan authorities, during both the repatriation and the settlement of the refugees.

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